

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Thursday, June 11, 2009

- - -

Oral deposition of JAY W.
HUGHES, JR., ESQUIRE, taken pursuant to
notice, was held at the offices of
KIRKLAND & ELLIS, 665 Fifteenth Street,
NW, Washington, DC 20005, commencing at
9:07 a.m., on the above date, before Lori
A. Zabielski, a Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania.

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1 - - -
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5 Testimony of:

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(Mr. Speights dropped of
23 teleconference from:)

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1 result of -- somehow the
2 inspections breached that duty,
3 and they are entitled to
4 compensation and damages as a
5 result of the breach.

6 BY MR. MANGAN:

7 Q. And do those allegations
8 form the basis for the State's claims for
9 contribution indemnification against
10 Grace?

11 A. Yes, they are related to the
12 claims.

13 Q. And will you agree with me
14 that the State of Montana has filed a
15 timely proof of claim within this
16 bankruptcy case?

17 MS. HARDING: Object to the
18 form.

19 MR. LIESEMER: Object to the
20 form.

21 MS. HARDING: And with
22 respect to the respect it calls
23 for a legal conclusion.

24 If you can answer, go ahead.

1 THE WITNESS: My
2 understanding is that it had, but,
3 again, I would be more comfortable
4 if we could verify that. But yes.

5 BY MR. MANGAN:

6 Q. But you are aware that the
7 State has filed a proof of claim?

8 A. It's my understanding that
9 the State has filed a proof of claim.

10 Q. How are the claims of State
11 of Montana for contribution
12 indemnification being treated under the
13 Plan?

14 MS. HARDING: I am just
15 going to object to the extent that
16 this witness wasn't designated for
17 that purpose. Mr. Finke was, and
18 I think he's testified, as has
19 Mr. Lockwood and other folks.

20 But to the extent you know,
21 go ahead.

22 THE WITNESS: Well, they are
23 treated as asbestos personal
24 injury claims, and within the

1 asbestos personal injury claim,
2 there are asbestos derivative
3 claims. And they would be
4 channelled to the Trust and
5 treated in accordance with the
6 Trust Distribution Procedures.
7 There are provisions of the Trust
8 Distribution Procedures that deal
9 with derivative asbestos claims.

10 BY MR. MANGAN:

11 Q. Would that be Section 5.6?

12 A. I believe so.

13 Q. Let me mark as an exhibit or
14 it already has been marked. Excuse me.
15 Hughes-3. Could you take a look at that?

16 A. Sure.

17 Q. Could you identify what
18 Hughes-3 is, sir?

19 A. It's Exhibit 4 to the
20 Exhibit Book, it says here, with I
21 believe the Plan, and it's a copy of the
22 Trust Distribution Procedures that are
23 part of the proposed Plan in the Grace
24 bankruptcy.

1 Q. Okay. And I believe you had
2 testified earlier that you have reviewed
3 that in preparation of this deposition?

4 A. Yes.

5 Q. And I think you had
6 testified to this, but I just want to be
7 clear. You did not draft this; is that
8 correct?

9 A. Yes.

10 Q. You only reviewed it?

11 A. Yes.

12 Q. And who was the draftsman of
13 this document?

14 MS. HARDING: Object to form
15 and foundation.

16 To the extent that you know,
17 go ahead.

18 THE WITNESS: I don't know
19 specifically who was the
20 draftsman. I think Peter
21 Lockwood, when he testified, may
22 have provided more information
23 about that.

24 BY MR. MANGAN:

1 Q. Does the Plan or the TDP
2 make any distinction between contribution
3 indemnification claims versus personal
4 injury, wrongful death, or property
5 damage claims?

6 MS. HARDING: Object to
7 form. The Plan speaks for itself.
8 To the extent that you
9 know...

10 THE WITNESS: Well, it
11 certainly has -- 5.6 deals with
12 indirect PI Trust claims, so there
13 is certainly some provisions that
14 recognize a difference between,
15 you know, direct claims, personal
16 injury plaintiffs and injured
17 parties, and claims that arise
18 from some sort of obligation of
19 Grace to indemnify parties or
20 contribution claims.

21 BY MR. MANGAN:

22 Q. Would you consider Montana's
23 claims of a different nature than a
24 typical personal injury, wrongful death

1 or property damage claim?

2 MS. HARDING: Objection,
3 calls for a legal conclusion.

4 MR. LIESEMER: I join in the
5 objection.

6 THE WITNESS: Again, I agree
7 with those who have objected that
8 it calls for a legal conclusion,
9 but they are certainly different.
10 The State of Montana is the State
11 of Montana, and individual
12 claimants are individual
13 claimants.

14 BY MR. MANGAN:

15 Q. To your understanding, are
16 the Montana claims based on different
17 acts from the types of claims which other
18 asbestos PI claims relate?

19 A. I don't know what you mean
20 by different acts.

21 MS. HARDING: Object the
22 form.

23 MR. LIESEMER: Object to
24 form.

1 MS. HARDING: Again, I think
2 it calls for a legal conclusion.

3 BY MR. MANGAN:

4 Q. You testified earlier that
5 you believe that claims were based on a
6 failure to warn; is that correct?

7 MS. HARDING: Object to
8 form, and I think it --

9 THE WITNESS: I don't think
10 I said that.

11 MS. HARDING: I don't think
12 he said anything about a failure
13 to warn.

14 THE WITNESS: Do you mean
15 the claims against State of
16 Montana?

17 BY MR. MANGAN:

18 Q. Yes, sir.

19 A. I thought I said the State,
20 in exercising its right to power to
21 regulate the operations of Grace in
22 Montana, undertook to inspect the
23 facilities, and as a result of that
24 activity, they had duties vis-a-vie the

1 employees in that it's alleged that there
2 is a breach of these duties, whether it
3 be a failure to warn or other things of
4 things. I don't know I said anything
5 about that. And I don't know the
6 details.

7 MS. HARDING: And I am just
8 going to object to the extent that
9 this witness is being asked to
10 characterize other claimants'
11 claims and issues that can be
12 readily read from a document that
13 describes the claim.

14 I don't know what relevance
15 it has to have this witness
16 characterize somebody else's
17 claims in light of the fact that
18 we are trying to get out of here.

19 But go ahead.

20 MR. MANGAN: I will be
21 brief.

22 MS. HARDING: I am trying to
23 let him answer everything.

24 MR. MANGAN: Thank you. And

1 I just want to note that I believe
2 he was identified with regard to
3 claims, specifically the claims of
4 the State of Montana and other
5 BNSF and MCC, as well as others.
6 So to the extent --

7 MS. HARDING: Let's just go
8 on. He's certainly not identified
9 to be the lawyer for anybody else
10 but W.R. Grace.

11 MR. MANGAN: Fair enough.

12 MS. HARDING: Go ahead. I
13 am not trying to be difficult.

14 BY MR. MANGAN:

15 Q. What is your understanding
16 how contribution indemnification claims
17 would be eventually paid pursuant to the
18 Trust? In what form would the payment
19 take?

20 MS. HARDING: Object to
21 form.

22 MR. LIESEMER: Object to
23 form.

24 MS. HARDING: The document

1 speaks for itself, and it calls
2 for speculation.

3 But go ahead.

4 THE WITNESS: I am not sure
5 I understand the question. What
6 do you mean by what form?

7 BY MR. MANGAN:

8 Q. Would contribution
9 indemnification claims be paid through
10 cash payment or stock or some other form
11 of payment?

12 A. I think they would be paid
13 pursuant to the Trust Distribution
14 Procedure, and I think the people are
15 paid in cash generally.

16 Q. At what point in time
17 pursuant to the Trust Distribution
18 Procedures would a contribution
19 indemnification claim be made?

20 MS. HARDING: Object to
21 form. It calls for speculation.

22 THE WITNESS: Pardon?

23 BY MR. MANGAN:

24 Q. Within the TDP, at what

1 point in time would payments be made to
2 avail a contribution indemnification
3 claim?

4 MS. HARDING: I am just
5 going to object to form. I think
6 to the extent the document
7 addresses that, it speaks for
8 itself. I am just not sure I
9 understand the question.

10 But go ahead, if you
11 understand.

12 THE WITNESS: I am not sure
13 I understand. I think as a
14 general rule, it would be when the
15 indirect personal injury -- the
16 holder of the indirect personal
17 injury claim, its liability to the
18 underlying claimant and it would
19 become, for lack of a better term,
20 fixed.

21 BY MR. MANGAN:

22 Q. Okay. Claims under the TDP,
23 are they processed on a
24 first-in/first-out basis?

1 MS. HARDING: Object to
2 form.

3 THE WITNESS: Generally,
4 there is a first-in/first-out
5 process, but the Trust
6 distribution procedure describes
7 in much more detail. There is a
8 lot of exceptions and different
9 kind of -- the details of how the
10 first-in/first-out queue operates.

11 BY MR. MANGAN:

12 Q. Is that also true for when
13 claims would be paid under the Trust?

14 A. Again, the document speaks
15 for itself, but, yes, there are
16 differences when claims would be paid.

17 Q. Is it fair to say that
18 claims that are, as you said, fixed
19 earlier in the process would be paid
20 earlier than other claims later in the
21 process?

22 MR. LIESEMER: Object to
23 form.

24 MS. HARDING: Object to

1 form.

2 THE WITNESS: You will have
3 to ask the question again.

4 BY MR. MANGAN:

5 Q. Is it fair to say that
6 claims under the Trust that are made
7 under the Trust, they could be paid at an
8 earlier time than other claims that start
9 in the process later?

10 MS. HARDING: Object to
11 form.

12 THE WITNESS: I think there
13 is that possibility, but, again, I
14 think the agreement in the Trust
15 Distribution Procedures in the
16 document speak for themselves.

17 BY MR. MANGAN:

18 Q. Is it your understanding
19 that any of the claims that Montana might
20 have against the Debtor for their
21 contribution indemnification are based on
22 independent conduct on the part of the
23 State?

24 MR. LIESEMER: Object to the

1 form, legal conclusion.

2 MS. HARDING: Object to the
3 form. It calls for a legal
4 conclusion.

5 THE WITNESS: It's based on
6 the -- they are based on the
7 State's conduct, and I think that
8 the Montana Supreme Court decision
9 is probably where you -- it
10 defines that conduct and defines
11 the legal basis for the claims
12 against the State.

13 BY MR. MANGAN:

14 Q. Does the Trust make any
15 distinction between claims that would be
16 derivative as opposed to claims that
17 might not otherwise be derivative?

18 A. You will have to ask the
19 question again. I am not sure I
20 understand it.

21 Q. I will strike that.

22 Under 5.6 of the TDP, are
23 you familiar with that section, sir?

24 A. Generally, yes.

1 Q. Okay. And that's relating
2 to the indirect PI Trust claims?

3 A. Yes.

4 Q. Is there a provision in
5 there that these indirect claims would
6 proceed or process in accordance with
7 procedures to be developed at a later
8 point in time?

9 MS. HARDING: Object to
10 form. Is there a particular
11 language you want him to look at?
12 It would just be helpful.

13 MR. MANGAN: Okay. Let me
14 go back to that in a second.

15 BY MR. MANGAN:

16 Q. If you could turn to page 32
17 of the Trust, Section 5.4(a), that's
18 relating to extraordinary claims.

19 A. Yes.

20 Q. Could you tell me what are
21 the requirements for a claimant to bring
22 an extraordinary claim?

23 MS. HARDING: Object to
24 form.

1 MR. MANGAN: Generally.

2 MS. HARDING: Do you want
3 him to -- in his own words?

4 BY MR. MANGAN:

5 Q. What is your understanding
6 of that, sir?

7 A. My understanding is that
8 there are people who -- excuse me --
9 whose exposure occurred primarily at a
10 Grace facility or that at least 75
11 percent of their asbestos exposure was
12 the result of exposure to Grace products,
13 and to some other language about Grace
14 conduct for or conduct for which Grace
15 had legal responsibility. And then there
16 is a subgroup that also requires 95
17 percent exposure to Grace products.

18 Q. And is one of the conditions
19 also that there would be little
20 likelihood of substantial recovery
21 elsewhere?

22 A. Yes.

23 Q. What is meant by that term?

24 MS. HARDING: Object to

1 form.

2 MR. LIESEMER: Objection to

3 form.

4 MS. HARDING: And

5 foundation.

6 BY MR. MANGAN:

7 Q. Are you familiar with that

8 phrase and why that was put into the

9 Trust?

10 A. Yeah. I mean, it's

11 logically consistent with the idea that

12 seven people who have 75 percent or 95

13 percent of their exposure to asbestos

14 from Grace products or conduct for which

15 Grace had legal responsibility, therefore

16 where these are primarily Grace exposure

17 cases, the logic behind that is that

18 Grace would therefore have a higher level

19 of responsibility for claims and,

20 therefore, these people are entitled to

21 additional compensation.

22 If claims of this group, for

23 example, have 75 to 95 percent, if it

24 develops over the course of time, have

1 other sources of compensation, then it
2 seems to me the logic for these claims
3 being treated as extraordinary claims --
4 an individual claim collapses, and that's
5 why that language is there.

6 So you don't have a series
7 of people coming in who have already been
8 compensated, who are receiving
9 substantial amounts of money from other
10 parties, being able to come in and claim
11 extraordinary claim status under the TDP.

12 But, again, all of this, all
13 of this is really a question about the
14 operations of the Trust, and the Trust
15 hasn't even been formed, let alone be in
16 operation. And I think while the Trust
17 Distribution Procedures set forth kind of
18 a roadmap of what's going to happen, some
19 of these questions and some of your
20 questions really are questions that are
21 kind of operational. And you would have
22 to see how it operates in practice once
23 the Trust is up and running.

24 Q. So there are a lot of issues

1 that need to be ironed out with
2 operations of this Trust?

3 MS. HARDING: Object to
4 form.

5 THE WITNESS: There is with
6 any contract. I think this is a
7 fairly detailed one in an effort
8 to kind of govern it. But when
9 you are setting up a Trust or any
10 process, the document can only do
11 so much. Some of the specific
12 issues that come up are going to
13 have to be dealt with once the
14 Trust becomes operational.

15 BY MR. MANGAN:

16 Q. And who would be making
17 those decisions when the Trust becomes
18 operational?

19 MS. HARDING: Object to
20 form, foundation, speculation, and
21 it's overly broad in terms of what
22 issues.

23 THE WITNESS: The Trust.

24 BY MR. MANGAN:

1 Q. And the Trust is yet to be
2 created, right?

3 A. Yes.

4 Q. If you could flip to Section
5 5.5, sir, Secondary Exposure Claims, do
6 you see that section?

7 A. Yes.

8 Q. Does this provision relate
9 to family members or does it also relate
10 to people who live in the community?

11 MR. LIESEMER: Object to
12 form.

13 MS. HARDING: Object to
14 form. Again, the document speaks
15 for itself.

16 THE WITNESS: I don't think
17 it would be necessary to relate it
18 to family members. But in
19 virtually -- in most cases, it
20 would be, because I think it's
21 dealing with situations where the
22 individual who has exposure is the
23 result of proximity to another
24 individual, spouse, and therefore

1 it's appropriate to use the same
2 criteria in terms of just
3 measuring their exposure to the
4 exposure of the person to be a
5 related occupationally exposed
6 person.

7 So it doesn't have to be a
8 family member, but I don't think
9 it would necessarily be applicable
10 to a community member as I read
11 it. But, again, others may
12 differ.

13 BY MR. MANGAN:

14 Q. Do you know what was the
15 history of this provision in the Trust?
16 Are you familiar with that.

17 MS. HARDING: Object to
18 form.

19 BY MR. MANGAN:

20 Q. How did this get into the
21 Trust?

22 MS. HARDING: And
23 foundation.

24 THE WITNESS: Well, I think